THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.8219 OF 2006

ORDER:

The petitioner claims to be a registered contractor undertaking the works relating to building maintenance, house keeping, sanitation and etc., In response to the tender notice dated 13.3.2006 issued by the 3rd respondent inviting sealed tenders for the comprehensive maintenance i.e. sweeping and cleaning of BRKR Bhavan, Hyderabad, for the year 2006-07 from 1.4.2006 to 31.3.2007, the petitioner had submitted his tender duly complying with all the requirements specified under tender notice. As per schedule the tenders were opened on 27.3.2006. The petitioner claimed that it had quoted 10% less than the estimated contract value; whereas the 4th respondent herein quoted 4% excess over the estimated contract value. However, the 3rd respondent had erroneously rejected its tender and awarded the contract in favour of the 4th respondent. It is alleged that as a mater of fact, the 4th respondent is not eligible to participate since he did not possess the registration certificate from the Labour Department; P.F. registration; ESI registration; Central Excise registration and etc., In spite of the same, the 4th respondent was awarded the work relaxing the tender conditions. Hence, this writ petition seeking a declaration that the action of the respondents 2 and 3 in issuing the work order dated 31.3.2006 in favour of the 4th respondent is arbitrary and illegal.

In the counter-affidavit filed by the 3rd respondent, it is stated that the petitioner was awarded the same work during the previous year i.e., 2005-06. However, subsequently, it came to light that the petitioner failed to pay ESI and EPF contributions for the year 2006-07, which are statutory obligations. It is further stated that when sealed tenders were invited for the work of comprehensive maintenance of

BRKR Bhavan, 11 applications were received seeking tender schedules. Among them eight applicants were found not eligible and, therefore, tender schedules were issued only to three eligible applicants. Thereafter, within the time stipulated, three tenders were received in sealed covers, and among the three, the petitioner was the lowest tenderer having quoted 10% less than the estimated contract value. However, the petitioner's bid was not considered since the amount quoted by it, on the face of it, did not ensure payment of minimum wages to the labour to be engaged as well as contributions towards Employees Provident Fund and Employees State Insurance to the contract labour that may be engaged. It is stated that the work put to tender is purely labour oriented and, therefore, it is necessary to finalize the tenders only after being satisfied that the bid amount would take care of the payment of minimum wages fixed by the Commissioner of Labour as well as contribution towards EPF and ESI. It is also stated that the petitioner's past record while executing the work for the year 2005-06 established that it failed to comply with the statutory payments to the labour. For the year 2005-06, it quoted 28% less than the estimated contract value and in order to make good the loss, it resorted to dishonest practice of not paying the minimum wages to the contract labour and also avoided statutory contributions. In the circumstances, the 3rd respondent was forced to withhold a sum of Rs.1,81,440/- from the payments of the petitioner in the month of September, 2005 and the same was kept in deposit to ensure payment of minimum wages to the labour as well as statutory payments to the concerned departments.

It is also stated that the petitioner though recovered contributions from the wages of the labour, failed to remit the same to the departments of Employees Provident Fund and Employees State Insurance. Ultimately, the 3rd respondent being the principal employer having withheld the amounts from the amounts payable to the petitioner, got the same remitted to the Employees Provident Fund and

Employees State Insurance vide cheque dated 31.3.2006 for a sum of Rs.96,783/- and Rs.23,111/- respectively. In view of the petitioner's conduct in executing the work during the previous year, and particularly the price quoted by the petitioner was found to be unworkable, the same was not accepted and the work was awarded to the second lowest bidder.

I have heard the learned counsel for both the parties and perused the material on record.

The learned counsel for the petitioner while placing reliance upon the Judgments in **Directorate of Education v. Educomp Datamatics Ltd.,**[1] **Tata Cellular v. Union of India**[2]; **Air India Limited v. Cochin Internationl Airport Limited**[3]; and **Monarch Infrastructure (P) Ltd., v. Commissioner, Ulhasnagar Municipal Corporation**[4], vehemently contended that the action of the respondents, on the face of it, being arbitrary, discriminatory and *mala fide*, is liable to be declared as arbitrary and illegal.

There can be no dispute about the law laid down by the Apex Court that the judicial review so far as contractual maters are concerned, shall be restricted to prevent arbitrariness or favouritism and it shall be exercised in the larger public interest or where it is brought to the notice of the Court that in the matter of award of contract power has been exercised for any collateral purpose.

In the case on hand, admittedly, the petitioner was awarded the very same work in the previous year on the basis of the price quoted by him, which was 28% less than the estimated contract value. However, the record shows that the price quoted by the petitioner was found to be unworkable and the petitioner had indulged in various irregularities and committed default in complying with the statutory requirements such as payment of minimum wages to the contract labour as well as payment of EPF and ESI contributions under the relevant statutes. Though the petitioner had disputed the said version

of the respondents 1 to 3 and filed an affidavit in reply contradicting the stand taken by the respondents as to the unsatisfactory performance during the year 2005-06, in the light of the material placed before this Court by the respondents 1 to 3, I am unable to agree with the plea of the petitioner. At any rate, the law is well-settled that even the lowest bidder cannot claim any vested right to the award of contract. At the most his right is restricted to claim that his bid should be considered objectively in a fair and proper atmosphere.

From the counter affidavit filed by the 3rd respondent, it is clear that the estimated contract value was prepared by the tender inviting authority taking into account the wages to be paid to the labour, the expenditure on account of statutory provisions of Employees Provident Fund and Employees State Insurance. Since the petitioner had quoted 10% less than the estimated contract value, the respondents having found that the same is unworkable to ensure compliance with the statutory requirements as well as payment of minimum wages to the contract labour, thought it fit to award the work to the 2nd lowest bidder, who quoted 4% excess over estimated contract value. The rejection of the lowest bid on the said ground cannot be held to be either arbitrary or illegal.

As observed by the Supreme Court in **Patna Regional Dev. Authy. V. Rashtriya Pariyojana Nirman Nigam**[5] the performance record of the tenderer while executing previous contracts is relevant in deciding whether to award the contract in his favour of not. Such consideration cannot be said to be either arbitrary or unreasonable**.**

For the aforesaid reasons and particularly in the absence of any specific allegation of *mala fide*s against any of the officials of the respondent, I am unable to hold that the action of the respondents 1 to 3 is vitiated on any ground whatsoever. No other ground is urged or established to show that the decision making authority either exceeded or abused its power. It is also not the case of the petitioner

that the 3rd respondent had committed any error of law. In the circumstances, interference by this Court is not warranted.

The writ petition being devoid of any merit is hereby dismissed. No costs.

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(G. ROHINI, J.

24th October, 2006.
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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.8219 OF 2006

24th October, 2006.

Between:

M/s Reliance Enterprises (Regd. Contractor Firm),
represented by its Managing Partner – Anwar Hussain. ..
Petitioner.

And

The Government of Andhra Pradesh, Roads and
Buildings Department, represented
by its Secretary, Secretariat,
Hyderabad and others. .. Respondents.

[1] AIR 2004 SC 1962;

[2] AIR 1996 SC 11;

[3] AIR 2000 SC 801;

[4] AIR 2000 SC 2272.

[5] 1996 (4) SCC 529.